

C. The HEPO Does Not Address the Myriad of Consumer Protection Concerns Created by Single Billing by Suppliers.

The supplier bill "requirements" that would be imposed by the HEPO do not adequately address the safety and consumer concerns that single billing by unregulated gas suppliers would raise. For example, the Company agrees with the HEPO's conclusion that if suppliers are authorized to act as account agents for billing purposes, they should be required to include Nicor Gas' telephone number and a statement that the Company should be contacted in case of an emergency or a suspected natural gas leak, and to separately state the supply charges and Nicor Gas' delivery costs. HEPO, p. 28. But these "bare-bones" requirements do not resolve the Company's safety concerns, because it is the continuous association between the utility and the customer -- from seeing the Nicor Gas name on the bill or writing a check to Nicor Gas -- that reminds the customer to call the Company in case of an emergency or natural gas leak. Tr. 180.

Moreover, the HEPO does not even purport to require that unregulated gas suppliers acting as agents for billing comply fully with the Commission's rules regarding the information and format for gas utility bills.⁶ See 83 Ill. Adm. Code 500.330. This stands in sharp contrast to the position taken by the Commission with respect to electric bills issued by ARES. Specifically, in its order in Docket No. 99-0580, the Commission required ARES to comply in all respects with the electric utility bill format rule, concluding that "detailed billing information is needed to enable customers to make informed choices about their electricity provider, particularly in this early stage of the

⁶ Nicor Gas is currently supporting a proposal for a certification requirement for gas suppliers before the General Assembly. The bill has passed out of committee and is expected to be further considered by the General Assembly in November, 2001.

development of a competitive electricity market in Illinois.” Docket No. 99-0580 (July 6, 2000) (slip op. at 25), 2000 Ill. PUC LEXIS 565, *54-55; see 83 Ill. Adm. Code 410.210(a). In this regard, Nicor Gas’ proposal that the Company provide single billing on behalf of suppliers, if the customer or supplier desires single billing, would ensure that gas customers will receive the benefit of compliance with the Commission’s billing standards.⁷ In stark contrast, the “solution” offered by the HEPO would not.

Similarly, Customer Select suppliers acting as account agents would not be subject to the requirements of Part 280 of the Commission’s rules, so there could be no assurance that they would comply with its provisions. For example, Part 280 requires gas utilities to allow a residential customer 21 days and a non-residential customer 14 days for payment of the bill. 83 Ill. Adm. Code 280.90. There is no assurance under the HEPO, however, that a supplier acting as a billing agent would issue single bills in a timely manner. This means either that the customer could receive a bill with less than the 21 or 14 days permitted before payment is past due, or that Nicor Gas could experience increased lag times before receiving payment.

Numerous other matters governed by Part 280 are also left unresolved by the HEPO, such as whether Nicor Gas or the supplier would bill overdue amounts owed to Nicor Gas and amounts due under a deferred payment agreement, how Nicor Gas would know whether or not customers have made timely payment for purposes of determining

⁷ The HEPO (p. 28) criticizes Nicor Gas for not specifying additional billing requirements for Rider 16 to address single billing by suppliers. However, the proponents of single billing by suppliers, not Nicor Gas, have the burden of supporting their position with appropriate tariff language – a burden that they utterly failed to carry. See *City of Chicago v. Commerce Comm’n*, 133 Ill. App. 3d 435, 442, 478 N.E. 2d 1369, 1375 (1st Dist. 1985).

whether a late payment charge is due, and how a customer could submit a single payment if the supplier's due date for payment does not coincide with the due date mandated by Section 280.90 for payments to Nicor Gas.

In addition, these and other issues raised by single billing by suppliers could create significant customer confusion. As discussed below, under one form of single billing proposed by Staff, a customer would receive an informational bill from Nicor Gas and a consolidated bill from the supplier, and would make a single payment to the supplier. ICC Staff Ex. 1.0, pp. 20-21 (Iannello Direct). GCI witness Alexander's testimony summarizes the confusion and problems experienced by customers where this type of single billing system has been implemented. GCI Ex. 4.0, pp. 11-12 (Alexander Rebuttal). While the stated intent of the HEPO (p. 28) in adopting single billing is to meet customers' desires and stimulate competition, it is clear that a billing requirement that creates customer confusion and dissatisfaction will accomplish neither goal and will, in fact, be counterproductive.

Furthermore, single billing by suppliers would deprive Customer Select customers of some beneficial bill options, such as the ability to elect to participate in Nicor Gas' Budget Payment Plan or its charitable Sharing program by checking a box on the bill. See Ill. C.C. No. 16 - Gas, 2nd Revised Sheets No. 54 and 55. These and similar customer-related concerns should lead the Commission to reject single billing by suppliers unless and until these issues can be carefully considered and resolved.⁸

⁸ GCI witness Barbara Alexander discussed a number of consumer issues associated with single billing of residential customers by suppliers in her rebuttal testimony and concluded that single billing by suppliers should not be implemented unless and until the

D. The HEPO Fails to Address the Increased Credit Risk to Nicor Gas that would Result from Single Billing by Suppliers.

The HEPO does not resolve the concern raised by both Nicor Gas and Peoples Gas that permitting suppliers to bill and collect for large numbers of customers would increase the utility's credit risk. The HEPO instead cavalierly dismisses this concern, on the ground that the record "contains no quantification" of increased costs that would result from increased credit risks, and that there are unspecified "avenues available" to Nicor Gas to recover increased costs, should they be incurred. HEPO, p. 28.

Given the HEPO's rejection of the Company's proposed supplier fees, it is not clear that Nicor Gas would have any "avenues" available through which to recover increased credit-risk-related costs, short of a full general rate case.⁹ Consequently, the Company would have no practical option other than to increase supplier deposits as a means of managing the increased credit risk of single billing by suppliers. Nicor Gas Ex.

consumer safeguards applicable to utilities are also applied to suppliers. GCI Ex. 4.0, pp. 11-16 (Alexander Rebuttal).

In view of the many serious issues of consumer safety, protection, and confusion raised by single billing by suppliers, it is important to recognize that (1) the Commission need not authorize single billing by suppliers in order for Customer Select customers to receive a single bill, because Nicor Gas offers a single billing service; (2) Customer Select suppliers need not receive the customer's transportation bill to manage the account because the supplier does not actively manage the customer's account; and (3) the Commission has not received any informal or formal customer complaints regarding single billing. Nicor Gas Ex. AEH-4, p. 4 (Harms Direct); Nicor Gas Ex. E, p. 17, and Rebuttal Ex. AEH-5 (CCSSI-1) (Harms Rebuttal).

⁹ The Company originally proposed, in Customer Select Rider 15, to require customers to pay any gas related costs originally billed to a supplier, to the extent that such charges were not recovered from the Supplier. Nicor Gas Ex. D, p. 9 and AEH-4, p. 3 (Harms Direct). However, Nicor Gas agreed to eliminate this provision in the face of opposition from Staff and the consumer intervenors. Nicor Gas Ex. F, p. 13 (Harms Surrebuttal). It did so, of course, with the expectation that imposition of a single bill requirement would be rejected by the Commission, as it was in Peoples Gas.

F, p. 28 (Harms Surrebuttal). Increased deposits could discourage supplier participation in the Program.

Of course, the HEPO is correct in observing that the record contains no quantification of increased costs that would result from single billing of numerous residential accounts by suppliers -- but that is because no quantification of such costs could realistically be prepared. For example, while single billing by alternate retail electric suppliers ("ARES") is required by statute, residential customers are not yet eligible to receive retail service, so there is obviously no empirical data on the credit risk posed by account agency for residential electric customers. See Nicor Gas Ex. F, p. 21 (Harms Surrebuttal). And, as noted above, the Commission rejected single billing by gas suppliers in the Peoples Gas Small Customer Transportation program, so that program has not produced any quantification of the credit risk posed by single billing either. Moreover, single billing by suppliers of the Company's other transportation customers cannot provide a useful "quantification," because of differences in customers, customer groups, and suppliers.

However, the record unquestionably does contain evidence that natural gas suppliers in other states have defaulted on their obligations and filed for bankruptcy protection, in some cases having demanded and received significant prepayments from customers. GCI Ex. 1.0, p. 34; GCI Ex. 4.0, p. 10. In addition, the introduction of a middleman in the Company's billing process would clearly increase the risk of account billing or crediting errors and of increased lag times between rendering of service and receipt of payment. Nicor Gas Ex. E, pp. 15, 18 (Harms Rebuttal). Thus, regardless of whether these risks can be quantified, it is clear that permitting a supplier to bill and

collect Nicor Gas' distribution charges for thousands or tens of thousands of customers would pose a greater credit risk to the Company than not permitting it. Nicor Gas Ex. E, p. 18 (Harms Rebuttal), Nicor Gas Ex. F, p. 26 (Harms Surrebuttal). This is a further reason why a single billing requirement should be rejected.

E. The HEPO Fails to Recognize that Implementation of Single Billing by Suppliers would Require Extensive Programming Changes to the Company's Billing System, Which Would be Both Costly and Time-Consuming, and Which Literally Could Not Be Completed by August 1, 2001.

The HEPO fails to address the costs that would be incurred if single billing by suppliers were to be implemented. This is a serious omission, because to implement single billing by suppliers, the Company would have to make significant changes to its billing system. In addition, Nicor Gas would need to develop from scratch an electronic system for sending bill information to suppliers, receiving payment from suppliers, and tying payment information to customers' accounts. Tr. 199; Nicor Gas Ex. E, p. 15 (Harms Rebuttal). Tracking and crediting payments to customer accounts would also be far more complex, particularly if partial payments were made that must be allocated to individual accounts. Nicor Gas Ex. E, p. 15 (Harms Rebuttal). Development and implementation of these new systems would require significant programming time, and the entire cost of the project would be incremental because the Company already has its own single billing service in operation. Nicor Gas Ex. F, p. 28 (Harms Surrebuttal).

These very significant expenses were not included in the Company's proposed supplier fees, and thus will not be recovered even if the proposed fees are approved in full. Nor would single billing save Nicor Gas anything even approaching its costs of billing for Customer Select customers, because the Company would still need to send messages to its customers regarding safety and education issues, such as the Company's

Budget Payment Plan, options for avoiding disconnection, and credit reporting policy.

See Nicor Gas Ex. F, pp. 23, 25 (Harms Surrebuttal).

Moreover, the HEPO fails to recognize that implementation of single billing would be very time-consuming. As Mr. Harms testified, without contradiction, if the Commission were to issue an order in July, 2001 that requires single billing by suppliers, the Company's proposed implementation date of March, 2002 for expanding Customer Select could not be achieved. Nicor Gas Ex. F, p. 28 (Harms Surrebuttal). Mr. Harms further testified that programming for single billing would add between 6 months and a year to the Company's proposed March, 2002 implementation date, depending on the kind of single billing ordered by the Commission. Tr. 199. Consequently, implementation of the new tariffs, or at least the single billing component, would need to be delayed until sometime between September, 2002 and March, 2003, if the Commission were to order single billing by suppliers (which it should not do). The HEPO wholly ignores this un rebutted testimony and orders Nicor Gas to implement single billing immediately. As discussed in Section V.A below, implementation of single billing by suppliers by August 1, 2001 would be literally impossible, which is yet another reason why imposition of such a requirement in this case should be rejected.

F. The HEPO Does Not Provide Sufficient Direction to Implement Single Billing by Suppliers.

Further compounding the problems surrounding single billing is the fact that the HEPO fails to specify what kind of single billing would be required under its provisions. In this proceeding, Staff witness Iannello proposed two different options for consolidated (single) billing by suppliers. ICC Staff Ex. 1.0, p. 21 (Iannello Direct); Nicor Gas Ex. E, p. 15 (Harms Rebuttal). Under one option, the customer would designate its supplier as

the recipient of the Company's transportation bill. Under the other option ("two bill/one-payment" option), Nicor Gas would provide the customer with the Company's transportation bill for informational purposes only. The supplier would bill for both transportation and supply services, and the customer would remit one payment to the supplier for all charges. ICC Staff Ex. 1.0, p. 21 (Iannello Direct). The HEPO contains no discussion of the relative costs, advantages, or disadvantages of each type of single billing, and provides the Company with insufficient direction as to how to proceed, if single billing were to be required by the Commission (which it should not be).

For all of the foregoing reasons, Nicor Gas urges the Commission to change the language on page 28 of the HEPO as follows, so as to reject single billing by suppliers, both as account agents and under a single billing tariff:

~~The Commission believes that single billing is desired by customers as well as suppliers and is necessary for competition to develop. However, it is not possible to implement a single billing tariff at this time because too many issues must be resolved before such a tariff could be adopted. In contrast, the obstacles to implementing single billing through account agents are few and can be surmounted. Therefore, the Commission concludes that single billing through account agents should be authorized subject to the modifications to Rider 16 authorized below.~~

~~——— To resolve Nicor Gas' concerns relating to safety, the Commission directs Nicor Gas to include in its Rider 16, Standards of Conduct, a requirement that all suppliers that act as account agents include Nicor Gas' telephone number and statements that Nicor Gas should be contacted in the event of an emergency or suspected gas leak.~~

~~——— Regarding an alleged increase in credit risk and related matters, the Commission notes that the record contains no quantification of any increased costs. Furthermore, to the extent that Nicor Gas incurs additional costs, there are avenues available to Nicor Gas to recover increases in costs.~~

~~——— With respect to billing requirements and formats, Nicor Gas could have, but did not, specifically identify additional requirements to include in its Rider 16, Standards of Conduct. The Commission concurs with Staff that suppliers acting as account agents should separately state the supply charges and Nicor Gas' delivery costs. Therefore, Nicor Gas is directed to include such a requirement in its Rider 16, Standards of Conduct.~~

~~Finally, the Commission notes that much of Nicor Gas' discussion related to single billing is an effort to refute reasons why single billing is desirable and can be implemented. Nicor Gas presents few reasons why single billing is undesirable or cannot be implemented.~~

The Commission rejects the arguments of Staff, NEMA, and the People that suppliers should be permitted to issue a single bill to customers, including both the supplier's charges and Nicor Gas' transportation charges, either under a single billing tariff or account agency. The absence of any legislative directive to implement single billing for the gas industry, in contrast to the clear legislative directive applicable to the electric industry, makes us question whether we have authority to require gas utilities to allow single billing by unregulated gas suppliers. And even assuming that we do have sufficient authority to mandate availability of this type of single billing, we find that requiring availability of single billing by gas suppliers would be premature, because we clearly have no authority to regulate gas suppliers or their bills. Moreover, as virtually all the parties have pointed out, a host of consumer issues would need to be resolved before it would be appropriate to require availability of single billing by suppliers. Not only have we not yet undertaken a rulemaking proceeding to evaluate pertinent issues, under the current legislative scheme, we do not have the statutory authority to do so.

Consistent with our position when addressing the issue in Peoples Gas' Small Customer Transportation program in Docket No. 97-0297, we continue to be very concerned about the information that would be provided by unregulated suppliers to the small commercial and residential customers who participate in Customer Select. Unless and until our regulatory authority extends to alternate gas suppliers, and we undertake a comprehensive rulemaking to address billing matters, as we have in the case of ARES, we would be unable to ensure that customers will receive appropriate account and safety information on their bills if we were to permit single billing by unregulated suppliers.

We note that our decision on this matter does not leave Customer Select customers without the option of receiving a single bill, as Nicor Gas offers a single billing service that enables customers to receive a single bill, in a regulated format consistent with our rules and regulations, covering both the supplier's charges and Nicor Gas' charges. We encourage the Company to continue to make this option available.

III. The HEPO Erroneously Orders Nicor Gas to Eliminate its Billing Charge to Suppliers Who Voluntarily Contract with the Company for Billing Services.

Nicor Gas offers Customer Select suppliers the option of entering into billing agreements under which Nicor Gas issues a single bill for both gas supply and distribution services. See Nicor Gas Ex. F, p. 28 (Harms Surrebuttal). This is an entirely optional service provided by the Company under contract rather than by tariff. No

Customer Select supplier is required to enter into a billing contract with the Company, and every supplier is free to bill its own customers for gas commodity charges. Under the agreements, suppliers that elect to enter into billing contracts with Nicor Gas are charged \$0.50 per bill issued on their behalf. See GCI Ex. 2.0, p. 12 (Mierzwa Direct).

Inexplicably, the HEPO (p. 46) orders Nicor Gas to cease assessing the \$0.50 billing charge because it is not included in the Customer Select tariffs, and because Nicor Gas did not present evidence regarding the costs of billing on behalf of suppliers. Nicor Gas takes exception to the HEPO's determination on this issue, because the \$0.50 billing charge, as a nonutility activity, is properly reflected in an agreement between the Company and suppliers who choose to use the service, for which no Commission filing or approval is required.¹⁰

Specifically, under Section 7-102(E) of the Public Utilities Act, 220 ILCS 5/7-102(E), electric and gas utilities of the size of Nicor Gas are not required to file with or seek Commission approval of contracts, transactions or activities involving an annual consideration of less than \$5 million.¹¹ Moreover, it is clear that even the Hearing Examiners recognize that billing is not a utility function which must be performed under a tariff, because the HEPO itself proposes (albeit incorrectly) to permit unregulated, non-utility gas suppliers to perform such services. IIEPO, p. 28. Similarly, as the

¹⁰ There can be no serious question that providing billing services to third parties is a nonutility activity, as such services are routinely available from an array of nonutility suppliers.

¹¹ A single supplier would have to have over 833,000 customers for which Nicor Gas performed the billing at \$0.50 per bill before the annual revenues of the contract would approach the level at which Commission approval would even arguably be required. This number far exceeds the Company's present projections of total Customer Select participation. Nicor Gas Ex. AEH-8 (Harms Direct).

Commission is aware, it is a common practice among local exchange telephone companies to enter into billing and collection agreements with other providers of telecommunications services, and these arrangements are routinely undertaken by contract rather than tariff. See Nicor Gas Ex. E, pp. 17-18 (Harms Rebuttal).

For these reasons, Nicor Gas did not (and need not) seek Commission approval of its billing and collection agreements with Customer Select suppliers, include charges covered by the agreements in Rider 16, or present supporting cost data for the Commission's review. Because the Commission does not have authority to regulate or deny recovery of the purely voluntary, contractual, non-utility billing charge, the HEPO (p. 46) should be modified as follows:

Turning to the \$0.50 per bill charge assessed by Nicor Gas when it performs the billing for the supplier's charges to customers under Customer Select, the Commission notes that CUB/Cook County assert that this charge is not listed in Nicor Gas' Customer Select tariffs. Nicor Gas did not dispute this assertion, nor did it present any evidence as to the costs associated with this single billing. ~~Since Nicor Gas did not justify this charge, it is ordered to cease assessing this charge.~~ However, under Section 7-102(E) of the Public Utilities Act, 220 ILCS 5/7-102(E), and even assuming, arguendo, that providing a billing service is a utility function (which it is not), Nicor Gas is not required to file contracts with an annual consideration of under \$5 million with the Commission, and is not required to obtain Commission approval of such contracts or related activities. Moreover, the Commission recognizes that billing is not a utility function which must be performed under tariff, as we are aware that billing services are available from a host of non-utility providers. For these reasons, we conclude that Nicor Gas was not required to seek Commission approval of its billing agreements with Customer Select suppliers, to include its billing charge under Rider 16, or to present cost data in support of its charge.

IV. Fundamental Differences Among the Services Provided Under the Company's Transportation Tariffs Make Imposition of "Substantially Similar" Non-Performance Charges Inappropriate.

The HEPO (pp. 54-55) correctly determines that Operational Flow Orders ("OFOs"), as proposed by Nicor Gas in this proceeding, address legitimate operational concerns and should be permitted. The HEPO erroneously concludes, however, that the Company's proposed OFO Non-Performance Charge could be discriminatory, because it

would apply only to Customer Select suppliers and not to suppliers serving other transportation customers. HEPO, p. 55. To alleviate this concern, the HEPO directs Nicor Gas to file "tariffs that will implement penalties for non-Customer Select customers that are substantially similar to the OFO Non-Performance Charge." HEPO, p. 55. As explained below, however, the HEPO's direction on this issue is misguided.

Under the Company's Customer Select program, as proposed in this proceeding, two basic types of OFOs could potentially be imposed on Customer Select suppliers: (1) orders that would limit the volume of gas that the Company would confirm at a pipeline delivery point and (2) orders that would increase or decrease the Required Daily Delivery or Required Daily Delivery Range of Customer Select Suppliers.¹² Nicor Gas Ex. B, p. 12 (Gilmore Rebuttal).

With respect to the first type of Customer Select OFO -- limitations on nominations at restricted delivery points -- substantially similar limitations already apply to non-Customer Select suppliers and customers under the "Limitations on the Rendering of Gas Service" and the "Priority of Supply" provisions of the Company's Terms and Conditions. Nicor Gas Ex. C, pp. 4-5 (Gilmore Surrebuttal). The HEPO further ensures comparable treatment of Customer Select and non-Customer Select suppliers and customers with respect to limitations of delivery points by requiring the Company to state expressly in its tariff that it will not impose an OFO limiting delivery point volumes without also limiting delivery point volumes for non-Customer Select customers and the

¹² Under the Company's tariff, OFO Non-Performance Charges would apply only in the event of non-compliance with the Required Daily Delivery Range. Nicor Gas Ex. D, Schedule AEH-4, p. 7 of 12 (Harms Direct).

Company. HEPO (pp. 54-55) -- a reasonable requirement imposed by the HEPO to which Nicor Gas does not take exception.

Moreover, all suppliers and transportation customers are inherently treated equally under the Company's proposal with respect to "penalties" associated with this type of OFO, because neither the proposed Customer Select tariff nor the Company's other transportation tariffs impose any "penalties" for failure to comply with an OFO or other limitation on delivery points. See Nicor Gas Ex. D, Schedule AEH-4, p. 7 of 12 (Harms Direct). Rather, the restriction imposed under this type of OFO is effectively self-executing, because suppliers physically cannot bring into the Company's system more gas than is permitted under the OFO or other limitation. Since there can be no supplier "non-performance" under this type of OFO, an OFO non-performance charge could not be assessed on -- and is not proposed with respect to -- a Customer Select supplier for failure to comply with an OFO limiting deliveries at specified receipt points.¹³ Non-Customer Select suppliers are similarly unable to bring in more gas at the points that are the subject of the OFO than is permitted under the "Limitations on the Rendering of Gas Service" and the "Priority of Supply" provisions of the Company's Terms and Conditions and, consequently, cannot be assessed a penalty for non-performance either. Thus, with respect to this first type of OFO, all suppliers are already treated "substantially similarly" under the Company's proposal.

With respect to the second type of OFO, which could change a Customer Select supplier's Required Daily Delivery or Required Daily Delivery Range, imposition of

“substantially similar” penalties would be misguided, because the underlying responsibilities of Customer Select and non-Customer Select suppliers are fundamentally different. For Customer Select suppliers, OFO non-performance charges could be incurred for over- or under delivery of the Required Daily Delivery Range under the Company’s proposal. Nicor Gas Ex. D, Schedule AEH-4, p. 7 of 12 (Harms Direct); Nicor Gas Ex. B, p. 12 (Gilmore Rebuttal). However, Customer Select suppliers would incur no penalties for use in excess of the gas they deliver to the system, provided their deliveries fall within the required range. While additional constraints applicable to non-Customer Select suppliers may be needed in the future, depending on actual experience, constructing a “substantially similar” penalty structure for such suppliers in this case would not be reasonable, because these suppliers and customers already have delivery obligations stricter than the Required Daily Delivery Range with which Customer Select suppliers must comply. Specifically, and importantly, non-Customer Select suppliers and customers are responsible for daily balancing of usage, storage and gas deliveries.¹⁴ Nicor Gas Ex. B, p. 6 (Gilmore Rebuttal). And, unlike Customer Select suppliers, non-Customer Select suppliers are subject to penalties for unauthorized use of gas on critical days. See, e.g., Ill. C.C. No. 16, 2nd Revised Sheet No. 26.

¹³ While a delivery point OFO is in effect, a Customer Select customer could incur penalties for failure to comply with the Required Daily Delivery Range. This situation is discussed below.

¹⁴ Some non-Customer Select transportation customers are not subject to daily metering and daily balancing, but these customers must pay for full backup gas service, as would a sales customer, that reflects the backup costs incurred by the Company. Customer Select suppliers, on the other hand do not pay full backup charges. Nicor Gas Exs. B, p. 6 (Gilmore Rebuttal) and C, p. 7 (Gilmore Surrebuttal).

This difference in penalty structure properly and reasonably reflects and responds to the fundamental differences between the responsibilities imposed on suppliers and customers under the Customer Select and non-Customer Select transportation programs, respectively. Specifically, Customer Select Suppliers have a high degree of certainty in their daily nominations, because the Company gives them a Required Daily Delivery volume, as well as considerable daily nomination flexibility by virtue of the Required Daily Delivery Range. This means that, even on a monthly basis, Customer Select Suppliers are permitted to carry forward without penalty significant imbalances between usage, storage and total Required Deliveries to a future month. See Nicor Gas Exs. A, pp. 2-7 (Gilmore Direct) and B, pp. 6, 13 (Gilmore Rebuttal).

Non-Customer Select suppliers do not have similar flexibility, as the HEPO appears to recognize at page 57. Rather, they are responsible for managing their own accounts, including daily balancing of usage, storage and gas deliveries, unless they pay for full back-up gas service. Nicor Gas Ex. B, p. 6 (Gilmore Rebuttal). Unlike Customer Select customers, large volume transportation customers generally have the ability to reduce their gas usage either by reducing operations or utilizing alternative fuels, and their decision to do so is reflected in their daily meter reads. Thus, in order to impose a non-performance penalty on these customers that would be "substantially similar" to the OFO Non-Performance Charge imposed on Customer Select suppliers that fail to comply with an OFO adjusting the Required Daily Delivery Range, the Company presumably would have to devise some kind of daily delivery requirement applicable to non-Customer Select suppliers, nonperformance of which would lead to imposition of a penalty. But because non-Customer Select customers (or their suppliers) manage their

own accounts on a daily basis, unlike Customer Select customers and suppliers, the Company currently has no reasonable or legitimate way to calculate a delivery requirement applicable to them, given the content of presently-effective Commission-approved tariffs.¹⁵

The Company strongly believes that the features that make the Customer Select program different from its other transportation programs (i.e., the combination of certainty and increased flexibility in daily nominations) are the very features that make Customer Select attractive to small volume customers. These fundamental differences in the responsibilities of Customer Select suppliers and other transportation suppliers also make imposition of "substantially similar" penalties unwise and problematic. In view of the very different obligations of these two groups of suppliers, non-discrimination requires "comparable" rather than "similar" penalties for both groups of transportation customers. The Company's proposed structure of penalties achieves this objective for the present, because each type of transportation customer or supplier would incur penalties tailored to deter actions of the sort that could impair system operations.

In this regard, it is important to recognize that the Public Utilities Act does not prohibit all differences in charges, services, facilities or other tariff terms between classes

¹⁵ The Company is unsure whether the HEPO contemplates that "substantially similar" penalties would also apply to Nicor Gas. If so, such penalties would be highly problematic, because the Company does not -- and cannot prudently -- manage its system operations according to a formula. As an operating matter, Nicor Gas must constantly anticipate system requirements and purchase and dispatch its supplies daily as required to keep its system in balance, avoid penalties for failure to operate according to interstate pipeline tariff provisions, meet the needs of its customers, and avoid operational problems. Nicor Gas Ex. C, p. 4 (Gilmore Surrebuttal). Any attempt to impose a rigid formula for required deliveries by the Company, non-compliance with which would lead

of service. Rather, it prohibits only unreasonable differences. 220 ILCS 5/9-241; *City of St. Charles v. Commerce Comm'n*, 21 Ill. 2d 259, 264, 172 N.E.2d 353 (1961); *City of Chicago v. Commerce Comm'n*, 264 Ill. App. 3d 403, 411, 636 N.E.2d 704, 710 (1st Dist. 1993). In other words, while similarly situated customers must be treated similarly, the Act does not impose an obligation to treat very different groups of customers, such as the Company's large volume transportation suppliers and customers and its Customer Select suppliers and customers, in the same way.

Moreover, Nicor Gas has committed to prepare a detailed report for the Commission each time an OFO is issued. Nicor Gas Ex. D, Schedule AEH-4, p. 10 of 12 (Harms Direct). The HEPO (p. 55) specifies that this report is to be made publicly available, which Nicor Gas does not oppose and which is consistent with its intent in making the original commitment. Nicor Gas. Ex. B, pp. 10-11 (Gilmore Rebuttal). This level of scrutiny of the Company's actions with respect to OFOs should dispel any credible concern that Nicor Gas would use OFOs in a discriminatory manner.

The Company has one final concern with the HEPO's conclusions regarding OFOs. The HEPO correctly states (p. 54) that Nicor Gas would not impose a Customer Select OFO limiting volumes at a specific delivery point without also limiting deliveries by other transportation customers under the "Limitations on Rendering of Gas Service" and the "Priority of Supply" provisions of the Company's tariff "Terms and Conditions." The Company has no objection to the HEPO's requirement (p. 55) that it make that commitment explicit in its Customer Select tariff, but the language of the HEPO (p. 55)

to penalties, would directly conflict with the Company's overarching responsibility to manage its entire system in the safest, best cost, and most efficient manner.

that imposes this requirement should be clarified to parallel the language of the commitment.

To address Nicor Gas' exception, the Company proposes the following changes on page 55 of the HEPO:

.... Therefore, to mitigate this concern and ensure that all parties that contribute to operational problems pay a fair share of costs, the Commission directs Nicor Gas to modify its Customer Select tariff to explicitly state that it will not impose a Customer Select OFO limiting volumes at specific delivery points unless it imposes similar conditions on all other classes of non-Customer Select transportation customers, as well as on itself. The Commission believes that this requirement will increase the probability that such an OFO, and related limitations, will be effective and that sales customers as well as other transportation customers will share in the costs incurred to alleviate operational problems.

With regard to OFO Non-Performance Charges, the Commission believes that Staff has ~~again~~ raised a legitimate ~~that question concern~~ as to whether Customer Select suppliers and customers ~~may not be~~ would be treated fairly ~~in relation~~ under the Company's proposal as compared to non-Customer Select suppliers and customers. We conclude, however, that Nicor Gas has adequately justified the differences in its penalty structure. ~~This is not to say that the reasons Nicor Gas presented for implementing such charges are without merit.~~ For example, Nicor Gas is correct that penalty charges need not be cost based. Furthermore, while Nicor Gas has demonstrated that the underlying responsibilities of Customer Select and non-Customer Select suppliers are fundamentally different, making imposition of similar penalties inappropriate. In view of the different obligations of suppliers under Nicor Gas' different transportation programs, we find that Nicor Gas' existing and proposed penalty structure is fair and non-discriminatory, because each type of transportation customer would incur penalties designed to deter the kind of actions it might otherwise take that could compromise system operations. ~~it in some circumstances it is appropriate to treat various classes of customers differently, it has not explained why it is appropriate here, with regard to such penalties.~~ Therefore, to ~~alleviate this concern, Nicor Gas is directed to file within 90 days after the final order in this proceeding is entered, tariffs that will implement penalties for non-Customer Select customers that are substantially similar to the OFO Non-Performance Charge.~~

V. Technical Changes and Clarifications.

Several of the determinations contained in the HEPO raise issues of implementation or interpretation that require clarification, or other changes to the HEPO's language. How the Commission resolves these concerns will have a significant

impact on the cost and timing of implementing the requirements that are ultimately imposed under the Commission's Order.

A. Timing of Enrollment and the Effectiveness of Revised Tariff Sheets.

In this proceeding, Nicor Gas proposed to implement changes to its Customer Select program effective March 1, 2002. Nicor Gas Ex. E, p.1 (Harms Rebuttal). This amount of lead time between the end of the suspension period and the implementation date is necessary to fully communicate and implement the Company's proposed changes. *Id.*, pp. 1- 2. In addition, a number of the program changes proposed by the Company or suggested by the HEPO, such as OFOs and other operational changes, changes to the Supplier Code of Conduct, use of agency billing, and Letters of Agency, would require additional training for suppliers.

As the Company's testimony explains, implementation of major program changes not proposed by Nicor Gas, such as single billing (if required by the Commission), would take even longer to implement and would increase program costs. *Id.*, pp. 1-2, 18; Tr. 199. In fact, Mr. Harms explained that the extensive programming changes necessary to implement single billing by suppliers would require deferral of program expansion for between 6 and 12 months beyond the Company's proposed March 1, 2002 implementation date. Tr. 199. And, while the Company would use its best efforts to complete implementation as rapidly as possible if ordered to do so, it is not possible at this time to specify with absolute precision how much time related programming changes would require.

Given these timing concerns, Nicor Gas is very troubled by Finding (6) of the HEPO (p. 80) and the corresponding ordering paragraph, which appear to require the Company to make all the Customer Select program changes contemplated by the HEPO,

including changes not proposed by the Company such as single billing by suppliers, effective August 1, 2001. This would, of course, be literally impossible. Depending on which program changes reflected in the HEPO are accepted or rejected by the Commission, if new tariff sheets are to become effective August 1, 2001, the Commission's order should authorize the Company to specify appropriate implementation dates within the text of any tariff provision that cannot be implemented immediately. The alternative -- customer confusion and potentially substandard service -- would not be in anyone's best interests. Proposed language to modify the HEPO on this issue is included in the following section.

B. Approval of Rider 6 and Terms and Conditions.

The Company's filing in this case proposed changes to its Terms and Conditions and Rider 6, as well as to Riders 15 and 16. Nicor Gas Ex. D, pp. 17, 19, and AEH-4, pp. 1-2 (Harms Direct). The changes proposed by the Company to the Terms and Conditions were not opposed by any party, while the changes proposed to Rider 6 are necessary to implement OFOs under Rider 16. Consequently, the HEPO should be modified to accept these two tariff sheets as filed, except for a change in the effective date to correspond with the effective date for the other program changes.

Nicor Gas proposes the following changes to the Findings of the HEPO (p. 80) to address the implementation date of program changes and expressly approve the changes to Rider 6 and "Terms and Conditions":

- (5) the changes to Rider 6 and the "Terms and Conditions" proposed by Nicor Gas on August 11, 2000 are just and reasonable and in the public interest and should be approved, to become effective August 1, 2001; the revised tariff sheets for Customer Select (Riders 15 and 16), filed by Nicor Gas on August 11, 2000, should be ~~permanaently~~ permanently cancelled and annulled;

- (6) Nicor Gas should file new revised tariff sheets for Customer Select (Riders 15 and 16) to become effective on August 1, 2001 that are consistent with the Commission's determinations in this Order; the new revised tariff sheets should be filed with the Commission no later than July 20, 2001 to allow time for Staff review and submission of corrected pages, if necessary, before the effective date of August 1, 2001 for those tariff sheets; to the extent that Nicor Gas determines that any provision of Riders 15 and 16 cannot practicably be implemented on August 1, each tariff provision should specify its implementation date;
- (7) any motions, objections or petitions in this proceeding that have not been specifically ruled on should be disposed of in a manner consistent with the findings and conclusions herein.

IT IS THEREFORE ORDERED that the changes to Rider 6 and the tariff "Terms and Conditions" are approved, to become effective on August 1, 2001; revised tariff sheets for Customer Select Riders 15 and 16, filed by Nicor Gas on August 11, 2000, are permanently cancelled and annulled.

IT IS FURTHER ORDERED that Nicor Gas shall file new revised tariff sheets for Customer Select in accordance with Finding (6) of this Order. . . .

C. Letter of Agency

The HEPO concludes (p. 71) that Nicor Gas should require that suppliers use a letter of agency ("LOA") form, similar to that required to be used by ARES, for written enrollment of retail residential customers, and a comparable electronic version for Internet enrollment of retail residential customers. It is unclear, however, whether this LOA requirement is intended to apply to enrollment of current Nicor Gas residential sales customers, or just to residential customers who switch from one alternate gas supplier to another. In either case, the Commission should clarify that the LOA requirement does not apply to telephonic enrollment, as no party opposed the telephonic enrollment process presently in use. See Staff Ex. 5.0, p. 29.

Accordingly, Nicor Gas proposes the following clarification to the Commission's conclusions on pages 70-71 of the HEPO:

All parties agree that it is appropriate for customers to have the ability to sign up with suppliers via the Internet. As a result, the Commission directs Nicor Gas to modify its tariffs to explicitly allow for this option. The Commission rejects Ms. Alexander's recommendation that the procedures used in Ohio or Pennsylvania be adopted. These procedures were not specifically identified in her testimony.

With regard to written enrollments of retail residential customers, the Commission directs Nicor Gas to modify its tariffs to require that suppliers use a document that contains information that is similar to that contained in the LOA in the electric industry. For Internet enrollments, electronic rather than written LOA documentation is acceptable. The Commission concludes, however, that there has been no demonstration that it is necessary to require a LOA for more sophisticated non-residential customers. Our LOA requirement applies both to initial enrollments of Nicor Gas residential sales customers and switching of suppliers by residential customers, if those transactions take place in writing or over the Internet. Contrary to Nicor Gas' suggestion, the Commission believes that use of a LOA for retail residential customers would not make the switching process cumbersome for suppliers nor substantially increase costs. Finally, the Commission directs Nicor Gas to revise its tariffs to require that suppliers maintain the LOA type of documentation while the customer is obtaining service from the supplier. The parties agree that Nicor Gas' current procedures for telephonic enrollment are adequate, and therefore we do not require any changes to those procedures.

D. Historical Bill Information

The HEPO (p. 67) concludes that Nicor Gas should be required to provide historical usage and pricing information to customers in a supplement to its bill. The Company is preparing a supplement containing the information that would be required by the HEPO to be mailed to customers to coincide with the effective date of expansion of the Customer Select program. Because preparation and mailing of this supplement to approximately 2 million customers will be costly, the HEPO should be clarified by the Commission so that it indicates that the supplement is to be provided to all customers only once, coincident with expansion of Customer Select. Historical transcripts of Nicor Gas bills are available to customers at any time upon request, and the Company will inform customers, in the supplemental mailing, that they can obtain their historical records from the Company upon request at any time.

At a minimum, the Company would be able to provide average gas usage data and corresponding historical cost data for the typical residential space heat customer. As noted above, customer-specific historical data would be available on request. Nicor Gas suggests that the specific contents and format of this informational mailing be a topic to be addressed during the workshops ordered by the HEPO.

Accordingly, the Company proposes the following changes to the first paragraph of the Commission's conclusions on page 67 of the HEPO:

In an effort to ensure that consumers have sufficient information to make informed choices, as suggested by Staff, Nicor Gas is directed to supplement its current bills with historical usage and pricing information. ~~In this supplement, Nicor Gas shall provide historical usage for each of the previous twelve months as well as the cost of gas supply for the previous month.~~ This supplement shall be issued once, to coincide with expansion of the Customer Select program. In addition, Nicor Gas shall inform its customers in the supplement that they may receive historical transcripts of their bill information upon request at any time. The specific contents and format of this informational mailing shall be addressed at the consumer education workshops, discussed below, to be held at the conclusion of this proceeding. In addition, the Commission directs Nicor Gas to make available distribution rates and historical PGA costs, expressed in cents per therm, ~~and distribution rates~~, for each of the previous twelve months, on its web site. This information is to be updated on a monthly basis.

VI. Conclusion

For all the foregoing reasons, as well as the reasons explained in Nicor Gas' Initial and Reply Briefs in this proceeding, the HEPO should be modified consistent with the Company's exceptions.

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
d/b/a NICOR GAS COMPANY

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June 7, 2001

CERTIFICATE OF SERVICE

I, Stephen J. Mattson, hereby certify that I have served the Brief On Exceptions Of Northern Illinois Gas Company d/b/a Nicor Gas Company on the attached service list by e-mail and first class mail, postage prepaid on June 7, 2001.

A handwritten signature in cursive script, reading "Stephen J. Mattson", is written over a horizontal line.

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